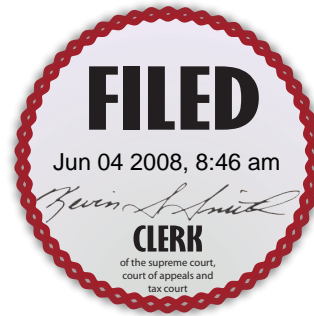


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

DAVID M. PAYNE
Ryan & Payne
Marion, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CHAD M. SAYLORS,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 52A02-0802-CV-139
)	
GAYLE ANN SAYLORS,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE MIAMI SUPERIOR COURT
The Honorable Daniel Banina, Judge
Cause No. 52D01-0612-DR-00465

June 4, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Chad Saylor's ("Husband") and Gayle Saylor's ("Wife") marriage was dissolved in Miami Superior Court. Husband was ordered to pay permanent maintenance to Wife in the amount of \$100 per week and fifty percent of all non-covered medical expenses. Husband appeals and argues that the trial court abused its discretion when it ordered him to pay permanent maintenance to Wife. We affirm, but remand for clarification of the dissolution decree.

Facts and Procedural History

Husband and Wife were married in 1996. Approximately six years before Wife filed for divorce, Husband beat Wife causing severe and permanent injuries to Wife's face. Her facial bones were fractured and required multiple repairs. She is now required to wear an oral prosthesis. As a result of the injuries, Wife is disabled.

Wife filed her petition for dissolution of marriage on December 11, 2006, and provisional orders were entered on February 1, 2007. Husband was ordered to pay \$100 per week to Wife for temporary maintenance.

A final hearing was held on December 20, 2007. The trial court concluded that Wife is permanently disabled due to Husband's conduct and noted that she receives Social Security Disability payments. The court ordered Husband to pay \$100 per week to Wife as permanent maintenance and fifty percent of all non-covered medical expenses. Husband appeals. Additional facts will be provided as necessary.

Standard of Review

Wife failed to file an appellee's brief. We will not undertake the burden of developing arguments for the appellee. Painter v. Painter, 773 N.E.2d 281, 282 (Ind. Ct.

App. 2002). Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id.

Discussion and Decision

A trial court's decision to award maintenance is within its discretion, and we will only reverse if the award is against the logic and effect of the facts and circumstances of the case. Matzat v. Matzat, 854 N.E.2d 918, 920 (Ind. Ct. App. 2006). "A maintenance . . . award is designed to help provide for a spouse's sustenance and support." McCormick v. McCormick, 780 N.E.2d 1220, 1224 (Ind. Ct. App. 2003). "The essential inquiry is whether the incapacitated spouse has the ability to support himself or herself." Id.; see also Ind. Code § 31-15-7-2(1) (1998).

Indiana Code section 31-15-7-2(1) provides:

If the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected the court may find that maintenance for the spouse is necessary during the period of incapacity, subject to further order of the court.

Under this statute, the trial court may make an award of spousal maintenance upon finding that a spouse's self-supporting ability is materially impaired. Bizik v. Bizik, 753 N.E.2d 762, 768 (Ind. Ct. App. 2001), trans. denied.

Husband does not challenge Wife's incapacity. He argues only that maintenance was awarded "as a punitive measure," and maintenance "should not be awarded on the allegation that one spouse is an alleged abuser." Br. of Appellant at 13. Wife testified that Husband beat her causing severe injury to her head and face, and she is disabled as a result of those injuries. Tr. pp. 5, 8-9. Because Wife established that her ability to

support herself is materially impaired, we conclude that the trial court did not abuse its discretion when it awarded maintenance to Wife.

Next, Husband argues that the trial court's discussion of a future modification of the maintenance award is inconsistent with statute and existing case law. At the dissolution hearing, the trial court remarked:

[D]ue to the fact that [Husband's] . . . employment has closed down [] . . . although I think she's probably entitled to more than \$100.00 a week, I don't see how you can realistically pay that. . . . [W]e'll go ahead and continue the \$100.00 a week payment, however, I would leave the door open if you were to gain other employment. I would authorize and allow [Wife] to come back and ask for an increase in the amount of the payment for the permanent injuries.

Tr. p. 22. The trial court did not include any future modification provision in its order dissolving Wife's and Husband's marriage. Certainly, if Wife petitioned for modification of maintenance, she would have to make the showing for modification required under Indiana Code section 31-15-7-3. However, no such petition is the subject of this appeal, and therefore, Husband's argument is not ripe for appeal.

Finally, Husband argues the trial court abused its discretion when it ordered him to pay Wife's medical expenses. At the dissolution hearing, the court stated that Husband was going to be required to pay fifty percent of "any other future bills related directly to these injuries." Tr. p. 22. However, in the order dissolving the parties' marriage, the court ordered Husband to pay fifty percent of Wife's "non-covered medical expenses." Appellant's App. p. 5.

Husband does not appear to challenge the trial court's decision to hold him partially responsible for the medical bills related to the injuries he caused, but only

challenges the court's written order, which holds him partially responsible for Wife's non-covered medical expenses without limitation. From the record before us, it appears the court intended to hold Husband partially responsible only for expenses related to the injuries he caused. Because of the inconsistency between the trial court's statement at the dissolution hearing and the written dissolution order, we remand this case to the trial court only for clarification of the dissolution decree as it pertains to Wife's accumulated and future medical expenses. In all other respects, the trial court is affirmed.

Affirmed and remanded for clarification.

MAY, J., and VAIDIK, J., concur.